



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

erential. *In re Tweedale*, [1892] 2 Q. B. 216; *Van Casteel v. Booker*, 2 Ex. 691. Under such a doctrine, the principal case may be supported, since no actual desire to prefer was found. In this country, however, a more satisfactory doctrine prevails, and the opposite result would certainly be reached under the National Bankruptcy Act of 1898, § 60 *b*, especially as amended by the Act of 1910, which avoids a transfer if the person receiving it has reasonable cause to believe that it would effect a preference. Here the debtor's motive is immaterial. *In re Herman*, 207 Fed. 594. Motive, as distinguished from intent, would be equally unimportant in finding the "intent to prefer" necessary to make a preference an act of bankruptcy. BANKRUPTCY ACT OF 1898, § 3 *a* (2). *In re McGee*, 105 Fed. 895. The fact that the original check in the principal case was received without knowledge of any insolvency is immaterial. For the payment of the check and not the giving of it constitutes the preference. *In re Lyon*, 121 Fed. 723.

BANKRUPTCY — PREFERENCES — NECESSITY OF INTENT TO PREFER UNDER NATIONAL BANKRUPTCY ACT: EFFECT OF AMENDMENT OF 1910. — A company transferred certain assets to the defendant, a creditor, within four months prior to the institution of bankruptcy proceedings. Its trustee in bankruptcy now sues to set aside this transfer. The lower court omitted to charge that the transfer would be voidable if the defendant had reasonable cause to believe that it would effect a preference. *Held*, that such omission is error. *Soule v. First National Bank of Ashton*, 140 Pac. 1098, 32 Am. B. R. 536 (Ida.).

Before the 1910 amendment the federal bankruptcy law provided that to render a preference voidable, the person receiving it must "have had reasonable cause to believe that it was intended thereby to give a preference." BANKRUPTCY ACT OF 1898, § 60 *b*; 1903, § 13 *b*. This language was construed by the courts to imply that the debtor must intend a preference. *Kimmerle v. Farr*, 189 Fed. 295; *Hardy v. Gray*, 144 Fed. 922. *Contra*, *Benedict v. Deshel*, 177 N. Y. 1, 68 N. E. 999. But the cases did not determine definitely whether this intent could be inferred from the natural and probable results of the debtor's act. *Hardy v. Gray*, *supra*. *Cf. Alexander v. Redmond*, 180 Fed. 92. Section 11 of the 1910 amendment to the Bankruptcy Act under which the principal case was decided, provides that a preference shall be voidable when the person receiving it shall have reasonable cause to believe that the enforcement of the transfer "would effect a preference." Under the present law, therefore, the intent of the debtor and the creditor's belief as to his intent are immaterial in determining whether a preference is voidable. It is to be noted, however, that to render the transfer an act of bankruptcy the debtor must still intend a preference. BANKRUPTCY ACT OF 1898, § 3 *a* (2).

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — RIGHTS OF ACTION ARISING UPON CONTRACT: EFFECT OF AMENDMENT OF 1910. — A materialman filed notice of his lien, within the period prescribed by the lien law, but two days after the adjudication in bankruptcy of the contractor, to whom money was owing under his contract to pave the city streets. The 1910 amendment to § 47 *a* of the Bankruptcy Act of 1898 gives the trustee the rights of a lien creditor on property in the custody of the court, but as to property not in the custody of the court the rights of a judgment creditor holding an execution returned unsatisfied. *Held*, that the materialman prevails, on the ground that the property is not in the custody of the court. *Hildreth Granite Co. v. City of Waterliet*, 161 App. Div. (N. Y.) 420.

It seems a serious error to apply the amended § 47 *a* of the Bankruptcy Act to a case like the present. That amendment was primarily intended to prefer the trustee to claimants under unrecorded conditional sales and abolish the rule of *York Mfg. Co. v. Cassell*, 201 U. S. 344. See 24 HARV. L. REV.

620. It gives the trustee in bankruptcy power over property in the bankrupt's hands to which another has title by virtue of a private agreement with the bankrupt. *In re Hammond*, 26 Am. B. R. 336. Section 70a of the original act gives the trustee the bankrupt's title to rights of action arising upon contract. The amended section 47a however speaks of giving a lien, and it would be anomalous for the trustee to have a lien on claims to which he already has title. Nor is there any specific sum in a contract debtor's hands to which a lien could attach. On its face, therefore, the amendment could not be intended to apply to the principal case. The trustee in bankruptcy here had title to the claim, and if the materialman is to prevail, it must be on the ground that he had already acquired a valid lien under the state law, good against the trustee, although not completely perfected before bankruptcy. *Crane Co. v. Pneumatic Signal Co.*, 94 App. Div. (N. Y.) 53; *In re Huston*, 7 Am. B. R. 92. Cf. *In re Roeber*, 121 Fed. 449.

BANKS AND BANKING — COLLECTIONS — LIABILITY FOR NEGLIGENCE OF CORRESPONDENT BANK. — The A. Bank gave a note, of which it was the indorsee, to the B. Bank for collection, under an agreement that the latter should only be responsible for negligence in choosing its correspondents. The B. Bank forwarded to the C. Bank under a similar agreement. The C. Bank forwarded to the D. Bank, which in turn forwarded to the E. Bank, neither of these banks making any reservation as to liability. Through the negligence of the E. Bank in presenting the note for payment, the indorser was released. The maker of the note was insolvent. The A. Bank now sues the D. Bank. *Held*, that it can recover. *McBride v. Illinois National Bank*, 163 App. Div. (N. Y.) 417.

New York has adopted the view of many other American courts that in the absence of special agreement a depository bank is liable for the default or negligence of its correspondents. *National Revere Bank v. National Bank of Republic*, 172 N. Y. 102, 64 N. E. 799; *St. Nicholas Bank v. State National Bank*, 128 N. Y. 46, 27 N. E. 849. *Contra*, *Wilson v. Carlinville National Bank*, 187 Ill. 222, 58 N. E. 250. Under this rule, however, in a chain of collecting banks, only the depository bank is directly liable to the depositor for the acts of its correspondents, for the latter are regarded as the agents not of the depositor, but of the depository bank. *Montgomery County Bank v. Albany City Bank*, 7 N. Y. 459, 464. Nor will a special agreement protecting the depository bank, according to the first appeal of the principal case, thrust this direct liability upon all the subsequent banks. *McBride v. Illinois National Bank*, 138 App. Div. 339, 121 N. Y. Supp. 1041. See 23 HARV. L. REV. 639. This liability for the acts of the correspondent banks, the second appeal now adds, devolves upon the first bank in the chain which does not protect itself by special reservation. The theory appears to be that the agreement constitutes the depository bank, and each succeeding correspondent similarly protected, a mere agent to employ some other bank as collector. It seems a very forced construction, however, to hold that the reservation goes beyond relieving the depository bank from the rule of *respondeat superior*, and affects the liability of the correspondent banks. Nor can the reservation be construed to do more than release the depository bank from an implied warranty of its correspondents, if that be taken as the basis of its liability. Under the rule prevailing in many other jurisdictions only the ultimate correspondent bank would be liable anyway, and the special agreement protecting the depository bank would therefore be immaterial. *Farmer's Bank of Virginia v. Owen*, 5 Cranch C. C. 504.

BANKS AND BANKING — COLLECTIONS — NATURE OF LIABILITY OF DEPOSITORY BANK. — The plaintiff deposited at the defendant bank a check on